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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,636	01/22/2004	Richard D. Lohrman	17417 USA	7715
27081	7590	11/15/2004	EXAMINER	
OWENS-ILLINOIS, INC. ONE SEAGATE, 25-LDP TOLEDO, OH 43666			CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,636

Applicant(s)

LOHRMAN, RICHARD D.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 18-21, 26, 27 and 35-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 22-25 and 28-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01222004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of invention II in the reply filed on 03 September 2004 is acknowledged. The traversal is on the ground(s) that Group I is directed to a closure and a container package and claim 35 is directed to closure for mounting on a container. This is not found persuasive because Invention II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP j 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed in Group I, claims 18-22, 26-27, 35-36 does not require the elastomeric dispensing valve of the subcombination as claimed in Group II claims 1-17, 22-25, 28-34. The subcombination has separate utility such as to control the flow of liquid.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 18-21, 26, 27 and 35-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 03 September 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3754

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by US

4,717,050 to Wright.

Wright shows a closure as seen in Figs. 1 and 7, a container 24 with a mouth, a closure 10 including a base 12, an opening 26 aligned with the mouth of the container, a lid 16 including engaging means 58 for engaging the opening in the base and having integrally formed hinge 38 and 52 that pivot between an open and a close position, a removable carried fitment 14, snap bead 28 and spud 66.

5. Claims 1, 10 and 22-25 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,575,330 to Rousselet.

Rousselet shows a container cap as seen in Figs. 1-7, a container 101, a closure 1, a base 2, a lid 3, hinges 32 and 34, engagement means 7 and means 14 for removing the closure from the container, an elastomeric dispensing valve 20.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3754

7. Claims 2-9, 11-17, 27 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,575,330 to Rousselet in view of US 4,717,050 to Wright.

Rousselet shows all claimed features as discussed above except for the fitment being removable mounted on the lid. Wright shows a fitment 14 removable mounted from the lid and the base of the closure. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Rousselet to include a removable fitment to provide the container with a closure for dispensing product through separate dispensing orifices of different size. See column 1, lines 36-39.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gibilisco shows a fluid dispenser. Randall shows a single axel dual dispenser. Valpuesta Lande shows a tamper proof tube cap. Gross shows dispenser closure. Silver shows a soft cup feeder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (703) 308-5810. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL MAR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700